

FCC DOCKET SUMMARIES

The following is a listing of significant Federal Communications ("FCC" or "Commission") actions that were initiated from March through December 1998. The docket summaries are organized according to the FCC bureau responsible for the matter. The docket summaries provide brief synopses and citation to the full text of the FCC action, but are not intended to serve for the original text contained in the original sources.

CABLE SERVICES

CS DOCKET No. 97-80; REPORT No. CS 98-11: CS DOCKET No. 97-80; REPORT No. CS 98-11: *In re* Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices, *Order*, June 11, 1998.

The Commission adopted rules that provide for the commercial availability of set top boxes and other consumer equipment used to receive video signals. The Commission adopted these rules pursuant to Congressional direction in the Telecommunications Act of 1996 ("1996 Act") to create rules which would enable consumers to obtain navigation devices from commercial sources other than service providers. The Commission ordered that multichannel video programmers must separate out security functions from non-security functions by July 1, 2000. An exception was made for the navigation devices that operate throughout the continental United States and are available from unaffiliated sources. Additionally, the Commission established a prohibition on the sale or lease of new integrated boxes as of January 1, 2005. Until that time, the Commission has approved the offering of devices that have security functions and non-security functions integrated.

FCC REPORT No. CS 98-9: *In re* Entertainment Connections Inc.; Motion of Declaratory Ruling, *Order*, June 30, 1998.

The Commission ruled that Entertainment Connections, Inc. ("ECI") is not a cable operator

required to franchise under Section 621 of the Communications Act of 1934. Factors cited by the Commission included that ECI: (1) is a satellite master antenna television provider which serves multiple dwelling units in the state of Michigan; and (2) is presently a subscriber of Ameritech's video service to distribute its programming to multiple dwelling units.

In making its determination, the Commission noted that the relationship between ECI and Ameritech is a carrier/user relationship and separation of ownership exists between the two. Additionally, Ameritech has no control over the content of ECI's programming. Further, there is capacity to provide the service to other programming providers. Lastly, the FCC determined that ECI is not a cable operator required to franchise because Ameritech's facilities were not constructed at the request of ECI.

CS DOCKET No. 98-201; REPORT No. CS 98-16: *In re* Satellite Delivery of Network Signals to Unserved Households, *Notice of Proposed Rulemaking*, Nov. 17, 1998.

The Commission adopted a Notice of Proposed Rulemaking regarding television signals. Television signal intensity is used to determine whether a consumer is unserved by the broadcast network station, thus, making them eligible to receive those stations using a home satellite dish pursuant to the 1988 Satellite Home Viewer Act ("SHVA"). The SHVA limits the ability to receive broadcast network affiliate programming via satellite to those that are unserved, determined by Grade B intensity. The Commission requested comments addressing its authority to amend the Grade B definition as it relates to the SHVA as well as how it may be redefined. The Commission acknowledged that it does not appear to have statutory authority under the SHVA to prevent subscribers involved in the court cases from losing the service.

CS DOCKET No. 96-83; REPORT No. CS 98-17: *In re* Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on

Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, *Order*, Nov. 20, 1998.

The Commission amended its rule under Section 207 of the Telecommunications Act of 1996 to promote consumer choice and competition in the video programming distribution market. The rule prohibits any restrictions that impair the use of dishes and antennas in rented apartments, homes or dwellings, and adjacent outside properties that are exclusively used by the renter. The Commission concluded that the rule does not extend to common areas that are owned by a landlord or community association. The Commission stated that it would not impose an affirmative duty on landlords or community associations to install or give up their property to permit viewers to install Section 207 devices on common areas.

CS DOCKET NO. 98-102; REPORT NO. CS 98-18: *Fifth Annual Report on Competition in Video Markets*, Dec. 17, 1998.

The Commission adopted and submitted to Congress its Fifth Annual Report on competition in markets for the delivery of video programming. The report's findings reveal that cable television continues to maintain a dominant market position because it is the primary delivery of technology for the distribution of multichannel video programming delivery ("MVPD"). The Commission did find that the number of subscribers of noncable MVPD's have increased as a result of the growth of direct broadcast satellite services. However, other noncable MVPDs have declined in their number of subscribers. The Commission also found that the 1996 Act's removal of barriers to LEC entry into the video market has not yet generated competition.

COMMON CARRIER

CC DOCKET NO. 98-13: *Report to Congress*, Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, May 8, 1998.

In a Report submitted to Congress, the FCC proposed that a single entity would administer all forms of federal universal service support. The Report responded to Congress' request that the Commission propose a single entity for administering universal service support for rural health care providers, schools and libraries. The Com-

mission proposed that these duties be performed by the Universal Service Administrative Company ("USAC"), the entity that currently administers the high cost and low income support mechanisms, and that performs billing, collection, and disbursement functions for all of the universal service support mechanisms.

Noting that the USAC Board includes individuals with the experience and expertise to understand and implement the distinct missions of the schools, libraries and rural health care support mechanisms, as well as, significant industry-wide representation of both contributors to and beneficiaries of the universal service support mechanisms, the Commission concluded the best option in accordance with Congress' request would be for USAC to serve as the permanent, sole administrator.

The Commission indicated Congress' request concerning revision of the administrative structure was sparked in part by a recent letter from the General Accounting Office ("GAO") which contended that the Commission lacked authority to direct the National Exchange Carrier Association, as a condition of its appointment as temporary universal service administrator, to create separate entities for the purposes of administering support for schools and libraries and rural health care providers. While the Commission argued it acted lawfully, it welcomed action by Congress to resolve the issues raised by the GAO's letter. Accordingly, the Commission respectfully requested from Congress specific statutory authority that would eliminate any question concerning the FCC's authority in this regard.

FCC DOCKET NO. 98-90; CC DOCKET NO. 98-67: *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, *Notice of Proposed Rulemaking*, May 14, 1998.

The Commission proposed several ways to improve the quality of existing telecommunications relay services ("TRSs") and expand those services for better use by the 2.5 million Americans with speech disabilities in order to advance the goals of Title IV of The Americans With Disabilities Act of 1990. Among the proposals included in the Notice of Proposed Rulemaking were the following: (1) the costs of speech-to-speech services and video relay interpreting should be recoverable

from the TRS Fund; (2) all common carriers providing voice transmission services must ensure that speech-to-speech services are available throughout their service areas within two years of adoption of final rules; (3) the current TRS minimum standards should be strengthened; and (4) the TRS enforcement rules should be amended to improve the Commission's oversight of certified state TRS programs.

CC DOCKET No. 96-45: *In re* Federal-State Joint Board on Universal Service, *Order*, June 12, 1998.

The FCC modified the mechanism by which schools and libraries will receive discounts on communication services. In the Order, the Commission revised: (1) the funding year for schools and libraries support mechanism; (2) froze the amount of funding at current rates; (3) revised the disbursement rules to ensure that the most disadvantaged schools and libraries get priority support; and (4) made other administrative changes consistent with the intent of Congress.

The decision also froze the amount of funding year for the schools and libraries discount mechanism from a calendar year cycle (January 1 – December 31) to a fiscal year cycle (July 1 – June 30). In order for the transition to take effect immediately, the first funding cycle will be extended by six months.

The decision also freezes the amount of funding for schools and libraries and rural health care providers at current rates. With regard to the schools and libraries support mechanism, the Commission directed the Universal Service Administrative Company ("USAC") to collect and disperse no more than \$325 million per quarter for the third and fourth quarters of 1998 and the first and second quarters of 1999. Funding collected for schools and libraries will be assessed, therefore, at a rate of 0.0075 – that is, three-quarters of one percent of total telecommunications revenues. The Commission also directed USAC to collect and disperse no more than \$25 million per quarter for the third and fourth quarters of 1998 for the rural health care mechanism.

The Commission also reiterated changes it is making to the administration of universal service, consistent with the will of Congress. In its May 8, 1998 *Report to Congress*, the Commission proposed

that a single entity, USAC, administer all forms of universal service support. The Order noted that the Schools and Libraries Corporation ("SLC"), the Rural Health Care Corporation ("RHCC"), and USAC must file with the Commission, for its approval, a joint plan of reorganization by July 1, 1998. Finally, the FCC lowered the level of compensation for the officers and employees of SLC and RHCC, effective July 1, 1998.

CC DOCKET No. 96-45: *In re* Federal-State Joint Board on Universal Service, *Order*, July 17, 1998.

The FCC released an Order asking the Federal-State Joint Board on Universal Service for recommendations related to the amount of universal service support that non-rural telephone companies should receive for serving high cost areas. Issues referred to the Joint Board included an appropriate methodology for determining the amount of high-cost support for non-rural carriers (*i.e.*, a method for distributing support among the states and, if applicable, the share of total support to be provided by federal mechanisms). The Commission asked if the current "25/75" approach is maintained, under what circumstances a state or carrier should qualify to receive more than 25 percent of its total high cost support from federal support mechanisms.

Also referred to the Joint Board was the issue of the extent to which federal universal service support should be applied to the intrastate jurisdiction. Along these lines, the Commission asked whether: (1) interstate access charges should be reduced; (2) the federal universal service policy should support state efforts to make intrastate support mechanisms explicit; and (3) questions concerning the relationship between the jurisdiction to which universal service funds are applied and the appropriate revenue base upon which contributions should be assessed.

Also referred to the Joint Board was the issue of the extent and manner to which it is reasonable for providers to recover universal service contributions through rates, surcharges, or other means.

CC DOCKET Nos. 98-146, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, 98-147: *In re* Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Notice of Proposed*

Rulemaking; In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Notice of Inquiry, Aug. 6, 1998.

The FCC initiated two proceedings intended to create marketplace conditions conducive to the nationwide deployment of advanced telecommunications services, (*e.g.*, as high-speed Internet access and video telephony) by all telecommunications providers. In the first proceeding, the Commission adopted a Notice of Inquiry pursuant to Section 706 of the Telecommunications Act of 1996, which directs the FCC to examine whether advanced telecommunications services are being offered to all Americans on a reasonable and timely basis. If the Commission's findings are negative, the FCC will take immediate action to remedy the situation, as directed by statute. Accordingly, the Commission asked for comment on what constitutes "advanced telecommunications capability," the extent to which such capabilities are being deployed, and what actions may be necessary to encourage deployment.

In the second proceeding, the Commission adopted a Notice of Proposed Rulemaking ("NPRM") that offers an incumbent local telephone company the option to provide advanced services through a separate affiliate on a largely deregulated basis while strengthening competitors' access to the piece parts of the incumbent's network and to floor space in the incumbent's central office (*e.g.*, collocation space). In the NPRM, the Commission stated that, under the 1996 Act, there is an optional alternative pathway for an incumbent local telephone company that is willing to offer advanced services on the same footing as other competitors. Additionally, the Commission proposed ways to facilitate the ability of new entrants to offer advanced services on an equal footing with an incumbent.

The Commission also issued an Order addressing issues raised in petitions filed by several Bell Operating Companies ("BOCs") and the Association for Local Telecommunications Services. The BOCs requested relief from certain of the 1996 Act's requirements that are generally applicable to incumbents' provision of telecommunications, including the unbundling requirement which

compels incumbents to make their network elements available for use by competitors at cost-based rates. The Commission concluded that Congress intended for the 1996 Act to be technologically neutral and was designed to ensure competition in *all* telecommunications markets. As a result, the Commission found that an incumbent local telephone company must interconnect its data network with the data networks of competitors. The Commission further concluded that it did not have the statutory authority to forbear from the critical market-opening requirements placed on incumbents under Sections 251 and 271 of the Act until those requirements have been fully implemented.

CC DOCKET NO. 98-170: *In re Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, Sept. 17, 1998.

The FCC proposed to make telephone bills more consumer-friendly by providing customers with information they need to make informed choices in a competitive telecommunications marketplace and to protect themselves against unscrupulous practices. In a Notice of Proposed Rulemaking, the Commission outlined three guidelines and asked for comment from the states, consumer groups, the industry, and general public on proposals that would follow these guidelines.

First, telephone bills should be clearly organized and highlight any new charges or changes to consumers' services. The Commission asked for comment on whether: (1) bills should contain a separate page or section that highlights any changes in the consumer's service since the last bill, including the addition of a new provider or new charges; (2) telephone companies should present separate categories of services (such as charges for local, long distance, and miscellaneous services) in clearly separate sections within the phone bill; and (3) bills should contain a separate section summarizing the current status of the consumer's services.

Second, telephone bills should contain full and non-misleading descriptions of all charges and clear identification of the service provider responsible for each charge. The Commission proposed that: (1) each charge on a telephone bill be accompanied by a brief, plain language description

of the service rendered; and (2) the name of the service provider be clearly and conspicuously identified in association with its charges. In addition, the Commission asked for comment on the descriptions of charges resulting from federal regulatory action, such as charges intended to recover telephone companies' costs in obtaining access and meeting universal service obligations.

Third, telephone bills should contain clear and conspicuous disclosure of any information consumers need to make inquiries about charges. The Commission found that, particularly in the case of slamming and cramming, consumers often experience considerable difficulty in contacting the company whose charges appear on the bill. The Commission therefore proposed that each bill contain the name of each service provider, a business address, and a toll-free telephone number for the receipt of consumer inquiries and complaints. In addition, the Commission asked for any other proposals to ensure that consumers have the contact information they need to resolve billing disputes.

FCC REPORT NO. CC 98-31: *FCC Finds Unlawful Ameritech and US Wests' Business Agreements With Qwest; Companies May Not Provide Long Distance Service Before Opening Their Local Markets to Competition*, Sept. 28, 1998.

The FCC ruled that business agreements entered into by Ameritech Corp. and US West Communications, Inc. violate the 1996 Act by enabling the companies to provide long distance service to their local customers prior to demonstrating that their local telephone markets are open to competition. The Commission's decision resolved complaints to the FCC concerning the lawfulness of two separate business agreements between Ameritech and Qwest Communications Corp. ("Qwest"), and between US West and Qwest. The agreements resulted in both Ameritech and US West providing, under their own brand names, a package of services that includes Qwest's long distance service, before gaining authorization to provide in-region long distance service. The decision required Ameritech and US West to cease offering Qwest's long distance service as part of the companies' CompleteAccess and Buyer's Advantage programs, respectively.

The Commission also determined that Ameritech's and US West's business agreements with

Qwest violated Section 271 of the 1996 Act. The Commission, in determining whether Ameritech and US West are providing long distance service through these business agreements within the meaning of Section 271, assessed whether the companies' involvement in the long distance market enabled them to obtain competitive advantages, thereby reducing their incentive to cooperate in opening their local markets to competition.

The Commission found that: (1) the inclusion of Qwest's long distance service in the CompleteAccess and Buyer's Advantage programs enabled Ameritech and US West to obtain competitive advantages, including the ability to provide one-stop shopping for local and long distance service; (2) Ameritech and US West held themselves out to customers as providers of long distance service by marketing and selling, under a single brand name, Qwest's long distance service and their own local and intraLATA (short haul) long distance service, as well as, by performing customer service functions in connection with Qwest's long distance service; and (3) Ameritech and US West performed various functions and activities under their business agreements with Qwest that are typically performed by those who resell long distance service. The Commission concluded that Ameritech and US West were indeed providing long distance service in violation of Section 271.

Because the CompleteAccess and Buyer's Advantage programs are unlawful with regard to Section 271, the Commission found it unnecessary to reach the issue of whether these programs also violate Section 251(g) of the 1996 Act.

CC DOCKET NO. 98-121: *In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., For Provision of In-Region, InterLATA services in Louisiana*, Oct. 13, 1998.

The FCC denied BellSouth's second application to provide long distance service in Louisiana and provided further guidance as to what the company must do to comply with the statute in areas where the application fell short. In addition, the Commission ruled that BellSouth need only certify in any future application for Louisiana, that it still satisfies the requirements of the checklist items that it has met in this application, thus streamlining the authorization process.

On July 9, 1998, BellSouth filed its second application for authorization under Section 271 of the 1996 Act to provide long distance service in Louisiana. The Commission reviewed all aspects of BellSouth's application and found that BellSouth satisfied the requirements of six checklist items and part of a seventh. The Commission concluded that, in any future application to provide long distance service in Louisiana, BellSouth may incorporate by reference its showing on the checklist items deemed satisfied. However, the Commission noted that these items may be challenged by commenters in a future application.

Although BellSouth undertook significant efforts to institute policies and procedures to ensure compliance with Section 272, it did not meet all of that provision's requirements. In particular, it did not demonstrate adequately that it disclosed all transactions with its long distance affiliate, which allows its affiliate to maintain superior access to information about these transactions. As a result, unaffiliated entities lack the information necessary to take advantage of the same rates, terms, and conditions enjoyed by BellSouth's affiliate. In addition, BellSouth failed to provide non-discriminatory access to its operation support systems ("OSS"), and thereby failed to provide the same information to unaffiliated entities that it provides to its affiliate.

The Commission reaffirmed its prior conclusion that it has discretion to identify and weigh relevant factors in determining whether BOC entry into a particular in-region long distance market is consistent with the public interest.

CC DOCKET NOS. 96-45 AND 97-160: *In re* Federal-State Joint Board on Universal Service, *Fifth Report and Order*, Oct. 22, 1998.

The FCC adopted the framework for estimating the costs incurred by certain telephone companies for providing services to consumers in rural, insular, and other high cost areas. Combined with specific variables, or "inputs," that will be determined later, this framework will provide cost information that can be used as part of the calculation of the amount of universal service support that non-rural carriers may receive for serving high cost areas. The amount of support available to carriers, however, ultimately depends upon other factors, including the model input values under consideration and upon Commission ac-

tion on recommendations from the Federal-State Joint Board on Universal Service.

The Commission's process to adopt a mechanism to estimate forward-looking economic cost is proceeding in two stages. In the first stage, the Commission is adopting a framework, or model platform, which accounts for elements that are essentially fixed, such as network design, network engineering, and soil and terrain. In the second stage, the Commission will select the inputs for the model, such as the costs of network components.

The model platform adopted here combines elements from each of the two industry-sponsored models, along with innovations developed by Commission staff. This platform allows the Commission to estimate the cost of building a telephone network to serve subscribers at their actual geographic locations. The model is capable of being adjusted to reflect any evolution in the definition of supported services, and is compatible with rural Americans' ability to use the Internet and other advanced telecommunications and information services. As such, the model platform will serve as a solid foundation for further decisions that will determine the amount of universal service support to be provided to non-rural eligible telecommunications carriers.

CC DOCKET NO. 96-45: *In re* Federal-State Joint Board on Universal Service, *Order and Notice of Proposed Rulemaking*, Oct. 22, 1998.

The FCC took action to ensure that the universal service support mechanisms operate fairly and equitably, particularly with respect to wireless telecommunications carriers. In a Memorandum Opinion and Order and Further Notice Proposed Rulemaking, the Commission addressed four issues.

First, the Commission provided wireless telecommunications providers with interim guidelines for reporting their percentage of interstate wireless telecommunications revenues. Specifically, the Commission established "safe-harbor" percentages that wireless carriers may use until adoption of final rules. These "safe-harbor" percentages will assist wireless carriers in allocating revenues between the interstate and intrastate jurisdictions.

Second, the Commission asked for comment on establishing rules to deal with those situations

in which universal service contributors cannot derive the amounts of their intrastate and interstate end-user telecommunications revenues readily from their books of account.

Third, the Commission asked for comment on the extent to which its universal service rules facilitate the provision of supported services by service providers, such as wireless telecommunications providers and cable operators, that historically have not provided services eligible for federal universal service support. The Commission asked for comment on the extent to which such providers are, in fact, supplying services eligible for support and what additional steps may be necessary to facilitate the participation of new providers and promote competition in the universal service context.

Finally, the Commission asked for comment on how much, if any, local usage eligible telecommunications carriers should be required to provide to customers as part of a "basic service" package.

CC DOCKET NOS. 97-21 AND 96-45: *In re* Change to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, *Order*, Nov. 19, 1998.

The FCC appointed the Universal Service Administrative Corp. ("USAC") permanent administrator of all forms of federal universal service support as of January 1, 1999. This action responded to Congress' directive that a single entity administer universal service support for rural health care providers, schools and libraries.

The Commission appointed USAC as universal service administrator on a permanent basis, subject to the Commission's determination after one year that USAC is administering support in an efficient, effective, and competitively neutral manner. As proposed by the reorganization plan, the Commission ruled that the USAC Chief Executive Officer will have overall management responsibility for all of the universal service support mechanisms. USAC'S operations will have three divisions: the Schools and Libraries Division, the Rural Health Care Division, and the High Cost and Low Income Division. In addition, three committees of the USAC Board of Directors will oversee the operations of the three divisions. Any action taken by a committee with regard to its respective support mechanism will be binding on

the Board, unless the USAC Board disapproves of the action by a two-thirds vote. The budgets prepared by each committee will be subject to review by the full USAC Board.

The order adopted three modifications to the reorganization plan. First, in order to provide adequate representation of rural health care providers, the Commission added one rural health care representative to the USAC Board and to the Board's Rural Health Care Committee. Second, to more fully reflect both rural and non-rural local telephone company interests, the Commission added one incumbent local telephone company representative to the High Cost and Low Income Committee. Third, the Commission declined to adopt the plan's recommendation to divest USAC from the National Exchange Carrier Association ("NECA") at this time. Rather, consistent with the May 1998 Report to Congress, the Commission said it would review after one year whether USAC should be divested from NECA.

CC DOCKET NO. 96-45: *In re* Federal-State Joint Board on Universal Service, Nov. 23, 1998.

The Federal-State Joint Board on Universal Service made recommendations to the FCC on how to ensure that local telephone rates in rural and high cost areas remain affordable and reasonably comparable to rates in urban areas both today and as America's telecommunications marketplace moves from monopoly to competition. The Joint Board recommended a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as competition develops, but that is no larger than necessary to meet the goals of the 1996 Act.

Under the Joint Board's recommended approach, the federal mechanism would provide necessary support as set in accordance with a two-step process. First, the Commission should determine if the cost of serving an area is significantly above a national average. Second, for areas that are more expensive to serve, the Commission should determine whether the state has sufficient resources to provide the support needed. In cases where a state lacks the resources to keep telephone rates reasonably comparable, the federal mechanism would provide the remaining amount of support.

The recommendation stated that the Commis-

sion should provide guidance to telecommunications carriers regarding the extent to which they recover their universal service contributions from consumers, to prevent carriers from over-recovering their contribution amounts. Specifically, the Commission should consider adopting a rule prohibiting carriers from establishing a line item charge to consumers at a rate greater than the carrier's own universal service assessment rate.

The recommendation further stated that the Commission should take decisive action to ensure that consumers are not misled as to the nature of charges on bills associated with recovering universal service contributions. Noting that interstate carriers are required to contribute to universal service but not required to impose such charges on consumer bills, the Joint Board recommended that the Commission consider prohibiting carriers from incorrectly describing such charges as being mandatory or federally-approved. Such misleading descriptions may indicate to consumers that all carriers are imposing the same charges and, therefore, discourage consumers from shopping for lower charges from competing carriers.

CC DOCKET No. 94-129: *In re* Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Ununauthorized Changes of Consumers Long Distance Carriers, *Second Report, Order and Notice of Proposed Rulemaking*, Dec. 17, 1998.

The FCC adopted new rules that will relieve consumers who have had their telephone service provider changed without their consent, a practice known as "slamming," from paying charges imposed by the unauthorized carrier for up to 30 days after being slammed. In addition, the Commission strengthened the verification procedures used to confirm telephone carrier switches and broadened the scope of its anti-slamming rules to further protect consumers. The Commission also unveiled a series of new initiatives that will make it quicker and easier for consumers to file complaints about slamming and other telephone-related fraud, as well as speed resolution of consumer complaints.

Under the new rules, any carrier that a consumer calls to report being slammed must inform the consumer that he or she is not required to pay any slamming charges incurred for the first 30

days after the unauthorized switch. The Commission noted that a 30-day absolution period provides incentive for consumers to review their phone bills carefully and promptly, and it provides incentive for carriers that legitimately sign up customers to verify switches properly so as to have solid evidence of the change.

The Commission modified the methods by which a carrier can fulfill its obligation to verify consumers' authorizations to change their telephone service providers. In particular, the Commission eliminated the "welcome package" as a verification method. Under that method, a carrier that signs up a customer mails to the customer a package containing a postcard that the customer has 14 days to mail back if he or she wishes to cancel the charge. The Commission noted that this method has been subject to abuse by unscrupulous carriers, and consumers should not have to take affirmative action to avoid being slammed. As a result, there are now three acceptable methods to verify carrier changes: a consumer signature on an authorization form, known as a Letter of Agency; an electronic authorization, usually resulting from a customer-initiated call to toll-free number; and verification by an independent third party.

The Common Carrier Bureau's Enforcement Division also announced its new Consumer Network project, a plan to provide consumers with tools to better protect themselves from telephone-related fraud, including slamming, as well as to provide consumers an easy means to file complaints. The Consumer Network will be implemented in three stages: a new web site which will allow consumers to file complaints electronically; the filing of complaints over the telephone, including calls placed to the FCC's toll-free number; and the establishment of an electronic interface with carriers.

INTERNATIONAL

IB DOCKET No. 98-60; REPORT No. IN 98-18: *In re* Comsat Corporation, *Order and Notice of Proposed Rulemaking*, Apr. 24, 1998.

The Commission approved the request of Comsat Corporation for reclassification as a non-dominant common carrier. Comsat was reclassified in the competitive markets of INTELSAT switched voice, private line, and occasional use video serv-

ices. It was reclassified in all product markets of full time video and earth station services. The reclassification will enable Comsat to file tariffs on one-day notice without economic cost support.

The Commission held that Comsat's reclassification has eliminated the rate of return regulation in its non-dominant markets. Further, the Commission issued a Notice of Proposed rule making to consider replacing the rate of return regulation in Comsat's dominant market with an incentive-based regulation. The reclassification does not require structural separation of Comsat's INTELSAT services and other activities.

IB DOCKET NO. 96-148; REPORT NO. IN 98-44: *In re American Telephone and Telegraph Company Petition for Waiver of the International Settlements Policy for Parallel International Routes for Accounting Rates and Division of Tolls for Packet Switched Service With the United Kingdom, Memorandum Opinion and Order, Aug. 6, 1998.*

The Commission proposed rules to reform the international settlement policy. The Commission projected the reformation will promote greater competition and lower international calling prices. The Commission proposal reflects the 1997 World Trade Organization Agreement on Basic Telecommunications that made commitments to open the markets to competition for telecommunications services.

Specifically, the Commission proposed to remove the international settlement policy and contract filing requirements for arrangements with foreign carriers which lack market power in WTO countries. Additionally, the Commission requested comment on whether to abandon the international settlement policy altogether for those carriers from WTO countries which meet the international simple resale standard. Further, the Commission requested comment on modifying the governing rules on international simple resale. Lastly, the Commission proposed changes to simplify the accounting rate filing requirements.

IB REPORT NO. IN 98-46: *International Bureau Authorizes Telmex/Sprint Communications, L.L.C. to Commence International Switched Resale Services, August 7, 1998.*

The Commission approved Telemex/Sprint Communications, L.L.C. ("TSC") commencement

of international switched resale services from the United States to all points, after determining that TSC has fulfilled the conditions of its license conditionally granted in October 1997. The International Bureau approval was conditioned on the demonstration by TSC that it had offered other U.S. carriers one-stop shopping and Paid 800 agreements on the same terms available to Sprint. The third condition related to the calculation of proportionate return traffic to the U.S. After evaluating TSC's filing on May 26, 1998, the Bureau held that Telemex has satisfied the conditions and no longer discriminates in favor of Sprint.

IN DOCKET NO. 98-172; REPORT NO. IN 98-52: *Commission Proposes to Redesignate Portions of the 18 GHZ Band; Allow Blanket Licensing of Fixed Satellite Service Earth Stations in the KA-Band; Allocate Additional Spectrum for the Broadcast Satellite Service, Sept. 17, 1998.*

The Commission proposed to redesignate the 18 GHZ band among currently allocated services. The Commission would ensure terrestrial fixed operators continued access to spectrum at 18 GHZ while allowing orbit and satellite service operators to deploy their new satellite systems. The Commission proposed to allow orbit and satellite earth stations in the Ka-band to operate under a single system license in those segment of the band which is designated as their primary use. Lastly the Commission proposed to align the domestic Table of Allocations with the International Telecommunication Union Region 2 Table of Allocations for Broadcast Satellite Service use.

MASS MEDIA

FCC DOCKET NO. 98-231; MM DOCKET NO. 97-217: *In re Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licenses to Engage in Fixed Two Way Transmission, Report and Order, Sept. 17, 1998.*

The Commission has approved the offering of two-way digital services by Multipoint Distributions Services ("MDS") and Instructional Television Fixed Services ("ITFS") licensees. The new rules permit licensees to use all or part of any of their 6 MHz channels for two-way service. Operators will be issued blanket licenses for "response station hubs," which will serve as collection points

for response station signals. Licensees will not have to apply for each license separately. The Report and Order allows for flexibility in two-way system design by permitting licensees to combine multiple channels to accommodate wider bandwidth uses, the "subchannelizing" of 6 MHz channels for smaller bandwidth uses, and by allowing response stations and boosters to operate up to maximum permitted MDS and ITFS power levels. The Report and Order specifically retains the existing 20-hour per-channel requirement for educational usage of ITFS channels, but relaxes content restrictions by allowing for fulfillment of these requirements through data, voice or video transmissions, and by requiring only that the usage be in furtherance of the educational mission of an accredited institution offering formal educational courses. The Report and Order also requires that ITFS licensees operating digital systems retain at least five percent of the capacity of their licensed spectrum for education usage. In addition, ITFS licensees will be accorded interference protection on the basis of a 35-mile radius protected service area, along with, the currently-provided registered receive-site protection. Rules will require prior notification of the activation of a response station transmitter located within 1960 feed of a registered ITFS receive site, a prompt remedy of any interference caused to an ITFS user, and the immediate cessation of the operations of any transmitter causing interference that is not remedied promptly. The Report and Order also permits ITFS licensees to exchange channels and satisfy some or all of their educational usage requirements on other channels in the wireless cable system, and increases permissible lease term limits from 10-15 years.

FCC DOCKET No. 305; MM DOCKET Nos. 98-204, 96-16: *In re* Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, and Termination of the EEO Streamlining Proceeding, *Notice of Proposed Rulemaking*, Nov. 19, 1998.

The Commission proposed new EEO rules that would require broadcast licensees to inform women and members of minority groups of job vacancies. The Commission's proposed rules came in response to the D.C. Court of Appeals decision in *Lutheran Church-Missouri Synod v. FCC*, which held that the Commission's broadcast EEO pro-

gram requirements were unconstitutional as applied to minorities because the Commission's regulatory rules "pressure stations to maintain a work force that mirrors the racial breakdown of their 'metropolitan statistical area.'" While requiring outreach efforts, the Commission's proposed rules do not dictate that employers compare their workforce with that of the local labor workforce or allow the Commission to use such a comparison when assessing an EEO program. Although the holding in *Lutheran Church* did not address cable entities, the Commission also proposed to modify its EEO rules for cable and MVPD entities to make them consistent with any new broadcast EEO rules.

The Commission invited comment on its belief that it has the statutory authority to retain the anti-discrimination provisions in its broadcast EEO rules. The Commission also requested comment on its proposal to reinstate the statistical employment data collection contained in the Annual Employment Report to be used to monitor industry trends. The Commission additionally asked for comment on: (1) specific recruitment requirements that could encourage entities to expand their pools of applicants without creating preferences for female or minority applicants; (2) whether it should relax EEO reporting and record-keeping requirements for small broadcast stations or broadcast stations in small markets; and (3) whether stations catering to religious audiences should be allowed to consider religious belief as a bona fide occupational qualification for radio station employees.

FCC DOCKET No. 98-307; MM DOCKET No. 93-25: *In re* Implementation of Section 25 of the Cable Television Consumer Protection and Competitive Act of 1992, *Report and Order*, Nov. 19, 1998.

The Commission adopted rules implementing Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, which established certain public interest obligations on direct broadcast satellite ("DBS") providers. The Commission ruled that the statute requires that DBS providers set aside four percent of their channel capacity for noncommercial educational or informational programming. The Commission interpreted the prohibition on editorial control under Section 335(b)(3) to allow DBS providers to

choose among qualified national education programming suppliers. However, the Commission circumscribed that discretion by limiting the number of set-aside channels a single national educational and informational programmer can use. Specifically, the limit is one channel, unless all qualified entities that have sought access have been offered access on at least one channel. In addition, as specifically mandated by Sections 312(a)(7) and 315 respectively of the Communications Act, DBS licensees must also grant candidates for federal office reasonable access to broadcast stations and equal opportunity at the lowest unit charge.

FCC DOCKET NO. 98-303; MM DOCKET NO. 97-247: *In re Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996, Report and Order*, Nov. 19, 1998.

Pursuant to the requirement in the Telecommunications Act of 1996 that it establish a program to assess and collect fees from broadcast licensees for "ancillary and supplementary" uses of the digital television (DTV) spectrum, the Commission adopted rules requiring broadcasters to pay a fee of 5% of gross revenues received from ancillary or supplementary uses of the DTV spectrum for which they charge fees or receive other specified compensation. The Commission announced that it will assess fees on all revenue, including subscription and advertising revenue, on covered services for which viewers must pay subscription fees and that the fee program would go into effect immediately. Beginning in 1999, the Commission will require licensees to pay the fee on December 1 each year for covered revenues received during the twelve-month period ending September 30. Broadcasters are also required to file an annual report on December 1 providing data that will allow the Commission, as mandated by statute, to report to Congress and consider adjustments in the fee level. The Commission indicated that it intended to review the fee assessment program by the time of its report to Congress on the program, which is mandated by the 1996 Act to be completed by 2001.

MM DOCKET NO. 87-268: *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Memo-*

randum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, Dec. 18, 1998.

The Commission revised and clarified certain FCC DTV allotment policies. First, the FCC modified its policy restricting requests for maximization of UHF DTV station power to 200 kW to provide flexibility for DTV licensees to request power increases up to 1,000kW. Applications proposing such power increase that would increase a station's DTV service area in one or more directions beyond the area resulting from the station's allotment parameters must meet several provisions. Such requests must include an interference analysis that demonstrates compliance with the de minimis interference standard set forth in 47 C.F.R. § 73.623(c)(2). The analysis must be performed assuming that all other DTV facilities are operating at the DTV power levels specified for their allotment or 200 kW, whichever is greater. The analysis must further assume that all other DTV facilities are operating at the allotted site and antenna height above average terrain.

Second, the Commission announced that in a subsequent Public Notice, the Mass Media Bureau will announce a window of time during which petitions to amend the NTSC Table of Allotments or amendments to freeze-waiver applications may be filed. Parties that had filed applications for new NTSC stations using allotments in the freeze areas will be permitted to amend their applications if such amendment would, using the criteria set forth in 47 C.F.R. § 73.623(c), eliminate interference to DTV service. Such amendments must conform to pertinent NTSC requirements. An application amendment may specify DTV operation.

WIRELESS

WT DOCKET NO. 96-198: *In re Implementation of Section 255 of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, Apr. 2, 1998.

The FCC adopted a Notice of Proposed Rulemaking ("NPRM") to implement Section 255 of the Telecommunications Act of 1996 ("the Act"). Section 255 represents the most significant governmental action for people with disabilities since the passage of the Americans with Disabilities Act of 1990 ("ADA"). In Section 255, Congress set forth a broad mandate that telecommunications service providers and equipment

manufacturers must make their services and equipment accessible to people with disabilities, to the extent that it is readily achievable to do so.

Under the NPRM, companies will be provided with flexibility concerning how they carry out the mandate. Nevertheless, carriers are responsible for ensuring that their products are accessible to persons with the full range of disabilities recognized under the ADA, to the extent that they is "readily achievable" to do so. However, the Commission did not propose to prescribe detailed implementation rules that companies must follow. Companies would assess whether it is readily achievable to make their products accessible to the full range of disabilities, and if not, why not.

The Commission proposed to adopt the ADA definition of readily achievable, which is "easily accomplishable and able to be carried out without much difficulty or expense." The Commission also proposed to analyze whether a particular telecommunications accessibility feature is "readily achievable" based on feasibility, expense, and practicality.

The NPRM proposed adoption of a "fast track" process for Section 255 complaints. The Commission believed that the fast-track approach would resolve many accessibility problems informally, providing consumers rapid relief and enabling manufacturers and service providers to apply their resources to solving access problems rather than subjecting them to burdensome procedural requirements.

FCC DOCKET NO. 98-91; REPORT NO. WT 98-13: *Third Annual Report to Congress On State of CMRS Competition*, May 14, 1998.

The Commission adopted its Third Annual Commercial Mobile Radio Service Competition ("CMRS") Report ("Third Report"). The Third Report evaluates various CMRS product categories and concludes that progress has been made toward competition over the past year. The Third Report considers three categories of CMRS products: mobile telephony, paging/messaging and dispatch. The Third Report describes the increase in the mobile telephony market subscriber-ship, which has reached 55 million, representing 20 percent of the nation's population subscribing to service and an increase of over 11 million new

subscribers during 1997. The Third report also observes that the paging and messaging industry is highly competitive and that new and innovative products are being offered. Finally, the report noted that the dispatch industry has seen a greater range of mobile messaging, mobile data and vehicle location services made possible by the deployment of digital technology.

FCC DOCKET NO. 98-234; WT DOCKET NOS. 98-20, 96-188: *In re* Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Service to Engage in Fixed Two-Way Transmissions, Sept. 17, 1998.

The Commission adopted rules consolidating, revising and streamlining its license application procedures. Specifically, the Report and Order adopts rule changes that will implement the Universal Licensing System ("ULS"). ULS is the integrated database and automated processing system developed by the Wireless Bureau to facilitate electronic filing of wireless applications, licensing information and public access to such information for all wireless radio services. The rulemaking also represents the first Report and Order of the Commission's 1998 biennial review of regulations pursuant to Section 11 of the Communications Act.

The Commission took various specific actions including the following: (1) adopting, consolidating and requiring various new application forms and procedures for wireless service; (2) assuring that electronic filing and data programs are accessible to persons with disabilities; (3) consolidating rules regarding the determination of whether a change to a pending application or existing authorization is treated as a major or a minor change; (4) adopting requirements for the submission of Taxpayer Identification Numbers ("TIMs") in ULS consistent with the Debt Collection Act of 1996; (5) adopting proposals to authorize reciprocal operation by foreign amateur radio licensees by rule, pursuant to international reciprocal operating agreements; and (6) identifying numerous General Mobile Radio Service (GMRS) rules to be eliminated and streamlined as duplicative or unnecessary to its regulatory responsibilities.